IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16489 of 2005
With
SPECIAL CIVIL APPLICATION No. 16490 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VIKAS VIDYALAYA & 1 - Petitioner(s)

Versus

MANUBHAI SUKHABHAI - Respondent(s)

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Appearance :
PS GOGIA for Petitioner No(s).: 1,2.

NOTICE SERVED BY DS for Respondent No(s).: 1.
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 17/08/2005

COMMON ORAL JUDGMENT

1. Though served, nobody appears on behalf of the respondents.

2. This Court has issued notice for final disposal and therefore, this Court is disposing of these matters today finally.

3. In both these petitions, the respective petitioners have challenged the legality and validity of the order passed by the Controlling Authority under the Payment of Gratuity Act dated 30th September, 2004 as well as the order passed by the Appellate Authority dated 31.1.2005.

4. Shri P.S.Gogiya, learned advocate appearing on behalf of the petitioner has vehemently submitted that number of submissions were made on behalf of the petitioner before the appellate authority. However, the appellate authority has neither dealt with the same, nor discussed the same and without assigning any reasons and justification, has dismissed the appeal confirming the order passed by the controlling authority. Shri Gogiya, learned advocate for the petitioner has taken me through the appeal memo and the objections raised therein which are annexed as Annexure-D collectively to the present compilation.

It appears that number of submissions were made on behalf of the petitioners challenging the order passed by the controlling authority dated 30th September, 2004. However, in view of the fact that the order passed appellate authority is unreasoned and non speaking orders, this Court proposes to remand the matter to the appellate authority and therefore, this Court is not going into the merits of the matter.

5. On considering the order passed by the Appellate Authority, it appears to this Court that the judgment and order passed by the Appellate Authority is non speaking order and no reasons have been assigned and only on that ground, in the interest of justice, this Court considers it just and proper to remand the matter to the appellate authority for deciding afresh and to pass a speaking and reasoned order after considering the submissions made on behalf of the petitioner as well as the respondent and to pass a speaking detail order dealing with all above submissions and other submissions, as also, dealing with the judgments that may be cited before it.

6. I have gone through the judgment and orders passed by the appellate authority and except the fact and/or observations that “Heard the arguments at length and thereafter, it says that the orders passed by the Controlling Authority is confirmed”.

7. Considering the judgment of the Hon'ble Supreme Court in case of CERTIFIED AREA COMMITTEE V. ADDL DIRECTOR CNSOLIDATION, reported in (2002) 10 SCC 87, the reasons are the flesh and blood of judicial adjudication and such reasons must be shown in the orders which are liable to be challenged in the Superior Court. Relying on the aforesaid decision of the Hon'ble Supreme Court, this Court also in case of AMBALAL SOMABHAI PARMAR V. STATE OF GUJARAT AND ANOTHER reported in 2004 (3) GLR 2397 held that the revisional authority was exercising the quasi judicial powers and the revisional authority is required to assign the reasons either to allow the revision application and / or to dismiss the revision application. The revisional authority cannot pass an order without assigning any reasons. It is held by

this Court that not assigning the reasons would lead to arbitrariness, more particularly, when the order passed by the revisional authority is subject to the challenge before the higher authority and/or before this Court, and if the reasons are not assigned, the higher authority and/or this Court would not be in a position to know what was passing in the mind of the revisional authority while rejecting the revision application. Considering the above judgments and considering the judgments and orders passed by the appellate authority, wherein no reasons have been assigned to confirm the judgments and orders passed by the controlling authority, the impugned orders passed by the appellate authorities are required to be quashed and set aside and the matters are required to be remanded to the appellate authority for deciding the same afresh in accordance with law and on merits and to pass speaking and reasoned order considering all the submissions made by the parties.

8. For the reasons stated above, both these petitions succeed partly. The judgment and order passed by the appellate authority dated 31.1.2005

passed in Gratuity Appeal No.40 of 2004 is hereby quashed and set aside. The matter is remanded remanded to the appellate authority under the Payment of Gratuity Act for deciding the same afresh in accordance with law and on merits and the appellate authority is directed to pass speaking and reasoned order while disposing of the aforesaid appeal dealing with all submissions made on behalf of the parties. Such exercise is to be completed within three months from the date of receipt of this order. It is however made clear that this Court has not expressed any opinion on the merits of the matter and the impugned order is set aside only on the ground that the same is non speaking and unreasoned and it is ultimately for the appellate authority to take an appropriate decision as stated hereinabove. It goes without saying that till the appeal is decided by the appellate authority on remand, the amount deposited by the petitioner may not be permitted to be withdrawn by the appellate authority in favour of the concerned workman – respondent.

Rule, in each petition, is made absolute to the

aforesaid extent with no order as to costs.

Direct Service is permitted.

[M.R.Shah, J.]

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